IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION NO.1114 of 1991

1. Mr. Vattekktte Madhavan Nair)
Flat No.16, Kusum Building,)
Sanghani Estate, Ghatkopar,)
Bombay-400 086.)
2. Mr. Chandrakant Manilal Mehta,)
3, Shreeji-Kripa, 6th Road,)
Prabhat Colony, Santa-Cruz (East))
Bombay.)..PETITIONERS

Versus

The Shipping Corporation of India)
Ltd., (a government of india)
Enterprise, having its registered)
office at Shipping House, 245, Madam)
Kama Road, Bombay-400 021.)..RESPONDENT

Mr. J.P. Cama with Mr. K.P. Anilkumar, for the Petitioner.

Mr. K.K. Singhvi with Mr. S.K. Talsania i/b. Mulla & Mula for the respondent.

CORAM:F.I. REBELLO & S.R. SATHE, JJ.

DATED: 1st July, 2004

ORAL JUDGMENT (PER F.I. REBELLO, J.)

1. The petitioners at the time of filing of the petition were Junior Officers, and were members of the Shipping Corporation of India, Officers Association, hereinafter referred to as the Association. All the petitioners, are citizens of India. They came to be promoted from staff to Junior Officers between 1st January, 1984, and 31st

December, 1987. On 19th October, 1987, the Association representing amongst others the petitioners herein signed a Wage Agreement with the management whereunder certain higher scales of pay were fixed and made to operate retrospectively so as to cover inter alia all staff members who had been promoted to the rank and post of Junior Officers from the year 1984 and upto the date of the said agreement. The agreement was to operate only upto August, 1988.

2. It is the petitioners case that in November, 1989 they came to learn that the respondent had signed another agreement with the Staff Union who represents Class III & IV cadre. The Agreement, it is contended, provided for giving emoluments to staff members at a rate higher than the petitioners who were in the officers grade. The settlement provided that all staff members who were promoted as Officers on and from 1st January, 1988 would be paid emoluments as per the rates prescribed in the agreement. This meant, according to the petitioners that, both as staff members and thereafter as promotee officers the petitioners Juniors were earning a much higher wage than the petitioners. The difference in wages between the petitioners and the staff members who were subsequently promoted and given benefit of the agreement signed by the staff union was so high that the discrimination continued even after the

petitioners were promoted to the next higher rank of Assistant Manager and further rank of Deputy Manager. Petitioners rely on the Charts at Exhibit "C" and "D" to demonstrate and/or illustrating the difference.

3. Petitioners contend that despite the fact that the staff, on promotion, received a higher salary than those who throughout had been their seniors the respondent management consistently refused to equalise their wages and to grant the petitioners atleast equal wages qua persons who were many years their juniors in the cadre. Right from 1989 the petitioners consistently approached the respondent management with the plea that they should be given equal pay for equal work but also on the principle that, it is highly inequitable that persons who were juniors to them both in experience and status throughout, should earn a higher salary and earn better benefits than the petitioners. As in the meetings held the matter could not be resolved the petitioners jointly wrote to the Chairman and Managing Director of the respondent vide letter dated 28th December, 1990. In the letter it was pointed out that Section Heads promoted after 1988 as Junior Officers were drawing a salary which was more than Rs.800/- per month above that of Section Heads who were promoted to the officer cadre and indeed as early as in 1984 and onwards. Various representations were made to

point out that the action of the respondent was arbitrary and violative of their rights under Articles 14, 16, 21 and 39 of the Constitution of India. The respondents were called upon to rectify the aforesaid anomaly and to pay to them higher emoluments which were legitimately due to them. As they received no reply one more letter was addressed on 21st January, 1991. In the letter reference was made to the earlier letter of 28th December, 1990 regarding wage anomalies and that the petitioners were suffering great prejudice and indeed humiliation while comparing their wages with those of officers promoted much after them. The respondents were called upon to discuss the issue. However, that did not materialise. They also took up the issue with the Officers Association at Calcutta in the matter of wage anomaly. The Association had earlier written a letter to the respondent company at Calcutta dated 9th January, 1991 on the issue of wage anomaly. The Calcutta office had recorded therein that the respondents head office had informed them that though there was admittedly an anomaly in wages of the junior officers, it would have to continue for some time until the scales of wages of officers were re-structured under a new agreement. The petitioners were informed that it was not possible to take any measures to correct the situation pending finalisation of the agreement. This action of the respondents it is contended is ex-facie

arbitrary and, therefore, ultra vires petitioners' fundamental rights under Articles 14 and 16 of the Constitution of India. It is pointed out that the Apex Court has now held that income is a part of livelihood and, therefore, a part of the right to life under Article 21 of the Constitution of India and as such the deprivation of a higher wages to the petitioners amounts to an invasion of the petitioners right to livelihood under Article 21 of the Constitution of India. The State is not entitled to act contrary to the directive principles of State Policy enshrined in Part IV of the Constitution and in the present context Article 39 which is enshrined therein.

. The petitioners further contend that the action of the respondent company in paying higher wages to the petitioners' juniors who are doing identically same type of work at the same place is arbitrary and unilateral and consequently ultra vires Article 14 and 16 of the Constitution, but, is also opposed to public policy. The contention is that the employees who do identical work are to be paid identical wages and the respondent employer are obliged to do so. Alternatively it is submitted that considering the settlement was limited by the settlement of 1987 and as the agreement operates till August, 1988 it must follow that the petitioners cannot continue to retain the wages which is admittedly lower than that available

to persons promoted to their rank and post after 1st January, 1988. The failure of the respondent management to bring the petitioners on par with their juniors in respect of wages and emoluments atleast after August, 1988 is ultra vires Articles 14, 16, 21 and 39 of the Constitution of India. The respondents in not effecting wage parity are discriminating against the petitioners in respect of wages. There is no discernible rational classification. There is nothing on record to indicate why the persons who are doing identical kind of work should be paid wages at different rate based solely upon their date of promotion and the Union to which they earlier belonged. The higher scales of pay is paid to officers who are doing no more work than the petitioners and who are not in any manner more skilled or qualified. On the contrary they being juniors to petitioners they lack the same level of experience.

. In any event it is submitted that if the petitioners had agreed to a wage settlement in 1987 which ultimately turned out to be lower than the wages negotiated by the aforesaid staff union and applied to its members when promoted to the officers' category, it was not permissible for the respondents to continue this discrimination. The petitioners Association when they had signed the agreement of 1987 were led to believe by the respondent management that the wages paid to them

were the best which they could afford at that time. They were thus led to believe that they had no option but to accept this amount and that the respondent could not afford to do better. This later on found to be incorrect. It is then submitted that under the doctrine of equal pay for equal work, the petitioners are entitled, atleast, at the very minimum, to wages which are equal to that of their juniors and in equity, to higher wages commensurate with the years of actual service. When the respondents realised that there is an anomaly in the rates of wages paid to the petitioners and their more junior colleagues, the respondent is bound to correct the anomaly. Articles 14 and 16 enjoin on the State to take steps to correct the breach of fundamental right and cannot ask the parties affected thereby to wait the pleasure of the State.

3. The petitioner in para.1 of the petition had averred that the petition was sought to be filed by them in representative capacity under Rule 1 Order VIII of the Code of Civil Procedure on behalf of themselves and 125 other identically situated officers of the respondent No.1. Leave to so sue was not sought from the Court or granted as the record would bear out.

. In the circumstances the petitioners prayed for the following reliefs:-

(a) That this Honourable Court be pleased to declare that the respondents have committed breach of Articles 14, 16, 21 and 39 of the Constitution of India in their application to the petitioners;

(b)That this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing the respondents to pay to the petitioners the same scales of pay as are paid to officers who are promoted to the rank and post of Junior Officers after 1-1-1988 after taking into account the petitioners actual years of service on that date.

4. A reply has been filed on behalf of the respondent by Dinkar Prabhakar Karnik denying the contentions and setting out their case. The petition is wholly misconceived and not maintainable as what the petitioners are praying is to set at naught the settlement dated 19th/20th October, 1987 arrived at between the respondent company and the Officers Association by invoking the principle of equal pay for equal work. It is well settled law that the said principle does not mean that all members of a cadre must receive the

same pay packet irrespective of various incidents of service. The present pay structure and wages are as a result of a settlement arrived at with the Officers Association of which the petitioners admittedly are members and as such the doctrine of equal pay for equal work is not applicable. The petitioners are members of the Association. The Officers" Association is a necessary party and the petition ought to be rejected on that count. When the petitioners were staff members, their collective bargaining agent was the staff union, Bombay. The wage and other benefits applicable to them were based on the settlements with the Staff Union from time to time. The wages of petitioner No.1 and 2 as staff members before they were promoted have been set out. On their promotion they were placed in a higher grade. The pay scale applicable to junior officers was on the basis of the Shore Officers Service Rules, as detailed in Service Conditions Booklet published on 30th September, 1973. All the staff members promoted to the Junior Officers cadre between 1-9-1984 and 20-10-1987 were placed in the same pay scale as mentioned in service conditions booklet at different points, depending on their basic pay, which they were drawing as a Section Head in the staff cadre. The Association representing the Officers including the petitioners signed a settlement with the respondent company in October, 1987. Clause 3.2 of the Settlement is relevant and

which reads as under:-

> "3.2 The shore based officers in service as on 31- 8-84 will also be paid Personal Pay to protect their emoluments. This personal pay will be the difference between the Basic Pay plus DA as on 1-9-84 in the old scale plus fitment benefit and the basic pay in the revised scale plus industrial DA as on 1.9-84. This personal pay would not be absorbable in future increments or increase in pay on account of promotion, but will be offset against pay increase at the time of next revision(s) w.e.f. 1-9-1988."

The settlement itself stipulated that the personal pay would not be absorbed in future increments or increase in pay on account of promotion, but would be offset against pay increase at the time of next revisions to be made effective from 1-9-1988. Clause 3.5 provides for the fixation of wages for officers who joined between the period 1-9-1984 till the date of signing the Agreement, and the same reads as follows:-

> "3.5. Officers who entered the hierarchy on the basis of the old pay scales of Corporation and D.A. formula corresponding to the Consumer Price index

for working class in Bombay, between the period from 1-9-84 till the date of signing this Memorandum of Agreement, shall be fitted in the revised structure as follows:-

a) Basic Pay will be as stipulated at 3.1;

b) Personal Pay will be limited to minimum Personal Pay of any other existing officer in the same scale;

c) Basic Pay plus Personal Pay of the new entrant will not exceed the Basic Pay plus Personal Pay of any of the existing officers in the same scale on the date of entry of the new entrant;

d) Personal Pay of the new entrant will be regulated in accordance with (b) and (c) above and subsequently absorbed as per clause 3.2 Officers who will be recruited after signing this Memorandum of Agreement shall receive no personal pay."

The settlement provides that Junior Officers who enter in the cadre from 1-9-1984 till the date of signing the settlement i.e. upto 19th/20th

October, 1987 were to be paid minimum personal pay applicable to that cadre as indicated in the settlement. It is pointed out that SCI was following commercial D.A. system for their employees based on Consumer Price Index applicable to the working class at Bombay. The D.A. applicable to the category of Junior Officers as on 1-9-1984 was Rs.2,410/-. In order to protect emoluments while switching over to Industrial D.A. system as on that date, it was agreed that payment of personal pay to them ranging from Rs.700/- to 808/- was sufficient.

. The settlement with the staff union expired in December, 1974. However, no new settlement could be signed with the Union for the reason that they were not ready for change over to the D.A. system from Bombay Consumer Price Index to that of Industrial D.A. system which was in force for majority of other Public Sector Undertakings. On the one hand, the Union was not ready to accept the Industrial D.A., and on the other hand the Government of India instructed SCI that no revision could be effected unless the Union accepts Industrial D.A. system as prevailing in other Public Sector Undertakings. The stalemate continued till November, 1989. After protracted negotiations, the Union accepted Industrial D.A. system and a new Wage Settlement was signed with the staff unions in November, 1989 with

retrospective effect from 1st January, 1988. During the period between 1st September, 1984 and 1st January 1988 the commercial D.A. based on Bombay Consumer Price Index had gone up by Rs.850/-. At the time of switch over to the Industrial D.A. on 1st January, 1988 a Section Head was drawing D.A. of Rs.3,260/- as against that of Rs.2,410/- drawn by a Section Head as on 1st September, 1984 prior to his promotion as Junior Officer. Like in the case of the settlement with the Officers' Association, in the new Wage Settlement with the Staff Union effective from 1st January, 1988, an element of personal pay had to be introduced for staff members in order to protect their emoluments on change over to the Industrial D.A. system. The Personal Pay applicable to each Basic Pay point was spelt out in the Memorandum of Settlement with the Staff Union. In view of the settlement, the total emoluments of Senior Section Heads who had to be given protection in view of the very high commercial D.A. worked out to a higher amount than that payable to the Junior Officers who were promoted prior to 1-1-1988. That was mainly due to higher personal pay which had to be given to the Section Heads in order to protect their pay. The wage fixation was based on the Memorandum of Agreement with the Staff Union.

5. An additional affidavit after admission was filed on behalf of the respondents dated 15th

June, 1994. It is therein set out that after the petition was admitted the Officers Association representing the petitioners submitted a charter of demands for revision and other benefits vide letter dated 29th August, 1991 effective from 1st January, 1987. There were protracted negotiations. After understanding was arrived at, the proposal was placed before the Board and thereafter to the Government of India for approval. After approval from the Government a revised wage settlement was signed on 3/7th September, 1992. At the time of revising the Wages Settlement there were some discussions about disputes raised by the petitioners in the present petition. It is the case of the respondents that they have given suggestions for the removal of anomaly which if it had been accepted would have considerably reduced the anomaly. The Association, however, insisted on extension of the fitment benefit at the rate of Rs.600/- to all Junior Officers on roll as on 31st December, 1991. The respondents, therefore, it is contended is following strictly the terms of wage settlement with the Officers Association. The petitioners, it is contended, are parties to the wage settlement. Reliance is placed on Exhibit "3" which is the agenda for the general body meeting. The petitioners as Junior Officers were drawing substantial higher basic pay as compared to those Junior Officers who were promoted after 1st January, 1988 and with their promotion to the rank

of Assistant Managers, the basic pay has further increased. The difference in total emoluments between those who were promoted prior to 1st January, 1988 and after that is only on account of personal pay, which was granted in accordance with settlements with Officers' Association and Staff Unions.

6. At the time of hearing of this petition on behalf of the petitioners it is submitted that the respondents could not discriminate between officers doing identical work. The juniors to the petitioners cannot draw more pay than the petitioners. The respondents are, therefore, guilty of infracting the provisions of Articles 14 and 16 of the Constitution of India. It is secondly submitted that the concept of equal pay to equal work is applicable to the present case and the respondents in as much as they are paying higher pay to the respondent juniors and lesser pay to the petitioners are discriminating between the officers in the same class and consequently this being discriminatory is arbitrary, illegal, null and void.

. On the other hand on behalf of the respondents their learned Counsel contends that there are no pleadings in support of the petitioners contention. Apart from no pleadings there is also no material to show that the parties

were similarly situated. There is nothing in the pleadings or material to show that the respondents are guilty of arbitrariness. It is then submitted that the persons must be similarly situated to invoke the provisions of Article 14 of the Constitution of India. The concept of "equal pay for equal work" would arise if the persons are similarly situated. Apart from that, it is submitted that merely because some additional pay is paid, it cannot be contended that there has been discrimination to invoke the principle of equal pay for equal work.

. Both parties have relied upon various judgments which will be adverted to the extent necessary for the purpose of deciding the issue in controversy.

9. In the instant case we must firstly note that the petition was filed on 22nd March, 1991 alleging arbitrariness or discrimination on the part of the respondents on the ground that the petitioners juniors were drawing higher pay/emoluments than the petitioners. The petitioners pay scales were re-fixed pursuant to an agreement arrived at between the respondents on the one hand and the Officers Association in the year 1991. The benefits under this new settlement have been received by the petitioners who are also the members of the Officers Association. It may

further be pointed out that the pay scales of both the petitioners and the other officers who they contend are drawing more wages are the same except those others are drawing additional pay based on protection of personal pay pursuant to the earlier settlement entered into between the respondents and the staff union.

8. The first contention that has to be answered is whether by allowing the junior officers to draw more pay the respondents have violated the principle of equal pay for equal work.

. It is in this back ground that we must consider the contentions to find out as to whether there is substance in the allegations made on **behalf of the petitioners. In Orissa University of Agriculture & Technology & Anr. v. Manoj K. Mohanty, JT 2003 (4) SC 104** in the matter of grant of pay scale on the principle of equal pay for equal work the Apex Court observed that a Court must examine the pleadings and facts of the case in order to appreciate whether the respondents satisfy the relevant requirements such as the nature of work done as compared to the nature of work done by the regularly appointed staff. In **The Union of India vs. Pandurang Kashinath More, AIR 1962 SC 680,** it can be observed that that for establishing discrimination it must first be established on pleadings that those who are being considered are

similarly situated. The principle behind this rule is clear. A pleading cannot be considered sufficient if it merely states that there has been discrimination as it is impossible for the other side to meet it adequately unless the other side knows in what manner the discrimination is said to have been made. The concept of equal pay for equal work has been explained by the Apex Court in **State of Andhra Pradesh & Ors. vs. G. Sreenivasa Rao and Ors., (1989) 2 SCC 290**. In that case the pay fixation of a junior was done under the fundamental Rules and the pay fixation was in conformity with the fundamental rules. The validity of the fundamental rules was not challenged. The Apex Court then observed as under:-

> "Doctrine of 'equal pay for equal work' cannot be put in a strait-jacket. Although the doctrine finds its place in the Directive Principles but this Court, in various judgments, has authoritatively pronounced that right to 'equal pay for equal work' is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of 'equal pay for equal work' cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object

sought to be achieved, is permissible."

Observing further the Apex Court observed as under:-

"15. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for

experience/passing a test/acquiring higher qualifications or incentive for efficiency are some of the

> eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal."." (emphasis supplied).

This judgment was again referred to and approved by the Apex Court in **Government of A.P. v. Veera Raghavan, 2000 LAB.I.C. 2113.** In that case the respondent was directly recruited as District Munisiff. When he was so recruited one M. Ramachandra Reddy and C. Rami Reddy were already promoted as District Munsiffs with effect from 13th November, 1966. However, in the seniority list of District Munsiffs, the respondent was shown as senior. However, they were drawing a pay which was more than the pay drawn by the respondent in view of their longer actual service. The respondent filed a Writ Petition seeking the same pay as was drawn by the two other persons were drawing on the ground that he was senior. An order was passed by the High Court directing to revise the pay of the respondent so as to make it at par with the pay actually drawn by the said two District Munisiffs.

While dealing with the issue the Apex Court noted the view taken in State of A.P. V. G.Sreenivasa Rao (supra) and observed that equal pay for equal work does not mean that all the members of the cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre, the constitutional mandate of equal pay for equal work is satisfied. Ordinarily, grant of higher pay to a junior would ex facie be arbitrary; but if there are justifiable grounds in doing so, than seniors cannot invoke the equality doctrine.

. In Union of India & Anr. vs. Swaminathan & Ors., (1997) S..C.C.690 the issue involved was whether the senior employees who got regular promotion on all India basis earlier than his junior is entitled to get his pay stepped up with reference to pay of his junior whose pay on regular promotion was fixed at a higher stage because the junior got opportunity of local ad hoc promotion while the senior did not get such opportunity. The contention of the promotees was that they were getting in the promotional post less pay than their juniors who have been subsequently

promoted to the same post. The Apex Court considering the proviso to Fundamental Rule 22 noted that for the purpose of fixation of pay on promotion one has to look at the pay being drawn by the promotee in the lower post. This pay in the lower post must be increased by one increment in that pay scale. The Court noted that the juniors have received higher pay than their seniors on account of the application of the proviso to Fundamental Rule 22. The judgment of the High Court directing that the Seniors be given higher pay scale than that of juniors was reversed. That view was reaffirmed in the case of Union of India & Ors. Vs. M. Suryanarayanan Rao, (1998) 6 SCC 400.

10. From the above judgments, what emerges firstly is that the doctrine of equal pay for equal work would not to be infracted as noted by the Apex Court in the case of State of Andhra Pradesh & Ors. v. G. Sreenivasa Rao & Ors.(supra), when a single running pay scale is provided in a cadre as the constitutional mandate of equal pay for equal work is satisfied. Secondly, if a junior according to the Rules, was drawing higher pay according to rules then also the doctrine would not be attracted. In our case pay is based on the settlement. On the facts of the present case what we have noticed is that there is no dispute that

both the petitioners and their juniors in the same cadre under both the settlements are drawing in the same pay scale. Therefore, there has been no violation of the doctrine of equal pay for equal work. The first contention must be rejected.

11. The second question which arises is whether there really has been any discrimination practised on the petitioners by the respondents. The pay and the benefits which the petitioners were entitled to were covered firstly by settlement of 19th October, 1987. By that settlement the pay scales were fixed and the basic pay and the dearness allowance of those in service at the particular time were set out. The settlement further provided for personal pay under clause 3.2. to protect the emoluments they were drawing. It was further set out that personal pay would not be absorbed in future increments or increase in pay on account of promotion, but will be offset against pay increase at the time of next revision. There is also a provision for fixation of personal pay of new entrants according to clause 3.5(d). What is important about that clause is that officers who will be recruited after signing of the Memorandum of Agreement shall receive no personal pay. In other words the juniors of the petitioners who were recruited after 19th October, 1987 were not entitled to the personal pay drawn by the petitioners at the time they were promoted. They

started drawing higher personal pay because of the settlement by the staff union on November 29th, 1989. Thereafter came the subsequent agreement with the Officers Association which came into effect from 1st January, 1987 which also provided for uniform pay scales and fitment. The issue therefore is whether because the juniors of the petitioners who were subsequently promoted as officers and who came to draw more pay because of the protection of their pay in terms of the Memorandum of Settlement entered into between the staff union and the respondents, can it be said that there is arbitrariness or discrimination practised by the respondents. The settlement of November 29, 1989 itself provided that the pay scale would be revised on 31st December, 1987. It was further provided that the basic pay of the staff who were in service of the Corporation as on 31st December, 1987 would also be changed from the pre-revised pay scales to revised pay scales as indicated in pay fixation. Then comes clause 3.2 which reads as under:-

> The shore staff in service as on 31-12-1987 will also be paid personal pay to protect their emoluments as shown in Annexure I.
>
> This personal pay would not be absorbed in future increments or increase in pay

on account of promotion but will be offset/adjusted against pay increase at the time of next revision(s)."

It is, therefore, clear that these junior officers who were staff members were entitled to benefits of the settlement and it is based on that their pay came to be fixed. On promotion this pay was protected as personal pay. As noted by the Apex Court in the case of G.Sreenivasa Rao & Ors. (supra) if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. One such justified ground is when the promotee from a lower cadre or a transferee from another cadre is given pay protection. In the instant case it is clear where the juniors to the petitioners who were subsequently promoted from the staff category had their personal pay protected in terms of the settlement. The petitioners, therefore, cannot contend that this action of the respondents is arbitrary. On the contrary the respondents at the time of proposing the revised pay scale had suggested that the fitment in terms of the new revised personal pay may not be given to the junior officers to remove the anomaly. This was not agreed to by the Association. It, therefore, cannot be said that the petitioners have been discriminated. The difference in pay arose merely because of the nature of the D.A. pattern. In so far as the petitioners were concerned they were

drawing pay on industrial D.A. where the staff were drawing pay on the Bombay D.A. until its ultimate change over to Industrial D.A. pattern. The plea of discrimination, therefore, must be rejected.

10. Lastly it must be pointed out that during the pendency of the petition the petitioners have been promoted to the next higher post. There has also been a subsequent agreement which we have already adverted to. This agreement was considered and approved in the general body meeting of the Association. The petitioners are members of the Association. The new pay scales were fixed as also fitment. The petitioners, therefore, cannot complain atleast after the settlement of 5th August, 1991 that they could are still being discriminated. On the contrary from the affidavit of Karnik dated 15th June, 1994 it becomes clear that the petitioners were drawing substantial higher basic pay as compared to their juniors. It has further come on record that the petitioners have been promoted to the rank of Assistant Manager and Deputy Manager and no more belong to junior officers. From that one more aspect has to be borne in mind. The effect of granting relief in pay scale would have cascading effect. If the petitioners are given the same pay as their juniors, in the scale of junior officers than those senior to the petitioners in the higher posts and

drawing lesser salary on account of such revision, will also be entitled for revision of their pay scale. The petitioners who are members of the Association with whom the respondents have entered into an agreement and which benefit they have received cannot, therefore, now contend that even if the pay scale of the higher scale have to be revised let that be so. Agreements between the employer and employees is to ensure certainty for the period for which the agreements are entered into. That cannot be changed atleast, more so after the benefits have been taken. In the instant case as already noted there has been no breach of the principle of equal pay for equal work. Apart from that there has also not been any discrimination practised by the respondents. No doubt it is true that a writ Court while examining the matter would not go by the strict rules of pleadings where it has to render justice. Nevertheless the only pleadings in the present petition are that the action of the respondents in paying higher wages to the petitioners juniors who are doing identically same type of work at the same place is not only arbitrary and unilateral and further that there was nothing to show that the persons doing identical work should be paid wages at different rate based solely upon their date of promotion and the Union to which they belong. In our opinion these are not sufficient pleadings to make out a case of discrimination. Even otherwise

on merits there is no discrimination.

11. In the light of that we find no merit in this petition. Rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(S.R. SATHE, J.)